

EXHIBIT 11

TRADEMARK LAW OFFICE 12
Serial Number: 75/584233
Mark: IBOOK

112

Please Place on Upper Right Corner
of Response to Office Action ONLY



07-22-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt #54

THE UNITED STATES PATENT AND TRADEMARK

In re application of:)	
Apple Computer, Inc.)	Examining Attorney:
Serial No.: 75/584233)	Mary Boagni
Filed: November 6, 1998)	Trademark Law Office 112
For: IBOOK)	

RESPONSE TO OFFICE ACTION

Assistant Commissioner for Trademarks
Box Responses
No Fee
2900 Crystal Drive
Arlington, VA 22202-3513

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Dear Ms. Boagni:

This communication is responsive to the outstanding Office Action mailed on June 23, 1999.

CONSENT AGREEMENT

The Examining Attorney has suspended prosecution of the above application based upon the existence of prior application number 75-182820 for the mark IBOOK as filed by Family Systems Limited Company. In response thereto, the Applicant hereby submits a duly executed consent agreement between these parties which defines the respective trade channels, stylizations, goods the marks will be used

upon and provides details of the parties on-going efforts to avoid any likelihood of confusion between their respective uses of the mark IBOOK. As such, it is respectfully submitted that the present application should be removed from suspension at the Examining Attorney's earliest convenience, thus allowing the mark to proceed to publication.

CONCLUSION

It is respectfully submitted that as all the outstanding requirements have been addressed, the present application is in condition for publication.

If the Examining Attorney has any further questions, she is urged to telephone the undersigned.

Respectfully submitted,

APPLE COMPUTER, INC.

Dated: 7/22/99

Michael W. Hicks

1 Infinite Loop
MS: 38-TM
Cupertino, CA 95014
(408) 974-1597

Michael W. Hicks

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to:	
Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513	
Express Mail No. <u>EL08937298</u> on <u>7-22-99</u>	
<u>Esther Campbell</u>	<u>7-22-99</u>
By: ESTHER CAMPBELL	Date

CONSENT AGREEMENT

This Agreement is made as of this 7th day of May, 1999, by and between Apple Computer, Inc., a California corporation, with its principal place of business at 1 Infinite Loop, Cupertino, California 95014(hereinafter referred to as "APPLE"), and Family Systems Limited, a United Kingdom company, located and doing business at 8 St. George's Street, Douglas, Isle of Man IM1 1AH, (hereinafter referred to as "FAMILY SYSTEMS").

WHEREAS, prior to APPLE's adoption and use of IBOOK, FAMILY SYSTEMS adopted and used the mark IBOOK for computer software used to support and create interactive, user-modifiable electronic books and related goods and services and has filed trademark applications for and intends to use the mark IBOOK for computer hardware and software or specifically computer hardware and software used to support and create interactive, user-modifiable electronic books, in the United States and in many other countries; and

WHEREAS, APPLE has adopted and is using the trademark IBOOK in connection with computer hardware, namely, notebook computers and has filed trademark applications therefor; and

WHEREAS, the parties to this Agreement are desirous of entering into an agreement that sets forth both parties' rights to use and register their marks for the identified goods and services. NOW, THEREFORE, in view of the foregoing and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration including that specified in

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Appendix A attached hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. APPLE uses or intends to use the mark IBOOK in association with computer hardware, namely, notebook computers and related goods and services used in connection with said notebook computers bearing APPLE's IBOOK mark, excluding software and software related goods and services.

2. The products and services provided or to be provided by FAMILY SYSTEMS under the mark IBOOK are computer hardware and software used to support and create interactive, user-modifiable electronic books and related goods and services.

3. APPLE shall limit its use of the mark IBOOK to the following two stylizations: (1) the "I" component of the mark in lowercase and the "BOOK" component of the mark in uppercase or (2) the "I" component of the mark in lowercase, the "B" component of the mark in uppercase and the "OOK" component of the mark in lowercase. APPLE shall ensure that any notebook computer or goods or services used in connection therewith displaying the IBOOK mark will also display, somewhere on said product and in the advertising of said product or service, the word APPLE or a design of an apple. APPLE shall further limit its use of the mark to products and services that come within the description in Paragraph 1 above and will specifically not use or attempt to register the mark IBOOK, or any mark similar thereto, on any products or services coming within the description in Paragraph 2 above. APPLE shall limit its registration of the IBOOK mark or any mark similar thereto to notebook computers and related

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computer hardware and peripherals used in connection with the notebook computers and users manuals sold therewith.

4. FAMILY SYSTEMS shall limit its use of the mark IBOOK to products and services that come within the description in Paragraph 2 above. Additionally, Family Systems shall specifically not use or attempt to register the mark IBOOK, or any mark similar thereto, on any products or services coming within the description in Paragraph 1 above.

5. APPLE shall provide a link on the IBOOK portion of the APPLE Internet web-site to the FAMILY SYSTEMS web-site which will identify FAMILY SYSTEMS as the owner of the IBOOK mark in connection with the FAMILY SYSTEMS' goods and services, as specified in Paragraph 2 above.

6. The parties shall not object to, contest, seek cancellation of, or in any way interfere with, directly or indirectly, the other's use and/or registration of their respective IBOOK marks, provided that such use and/or registration is in accordance with the terms of this Agreement. In addition, the parties expressly consent to the concurrent use and/or registration of their respective marks, provided that the marks are used and/or registered in accordance with the terms of this Agreement.

7. APPLE and FAMILY SYSTEMS shall notify the other of any violation of rights pertaining to the IBOOK marks that comes to such party's attention and which such party deems to be a violation of one or both of the parties' rights in their respective IBOOK marks. Each party shall promptly cooperate with the other, at the other's expense, in any action brought by the

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other against a third party seeking to enforce and/or protect one or both of the parties' rights in their respective IBOOK marks.

8. Either party shall have the right, but not the obligation, at its own expense, to join the other party in any action or proceeding taken against a third party to enforce or protect the parties' rights in their respective IBOOK marks. In the event that either party, after receiving notice of any infringement or violation, declines to take action against the alleged infringing third party, the other party may elect to take legal action against such third party.

9. The parties agree that their respective products and services, as defined in Paragraphs 1 and 2 of this Agreement, are distinctly different and, if used in accordance with this Agreement, the parties' use of their respective IBOOK marks are not likely to create a likelihood of confusion. Should actual confusion arise between the parties' use of their respective marks, the parties agree to cooperate and find ways to eliminate or further reduce the likelihood of confusion.

10. This Agreement shall not be changed, modified or discharged in whole or in part except by an instrument in writing duly signed by authorized individuals of both parties. A waiver of any provision hereof under any circumstances will not constitute a general waiver of any rights hereunder. Nothing herein shall be deemed to prevent either or both of the respective parties from pursuing any remedies available to it in case of a material breach of this Agreement. However, if one party believes that the other party has materially breached this Agreement, said

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one party shall provide written notice of such breach to said other party and said other party shall be afforded thirty days to correct such breach.

11. This Agreement shall be binding upon the parties hereto and each of them, and will inure to the benefit of, and will be binding upon the agents, representatives, heirs, partners, directors, officers, employees, affiliates, subsidiaries, predecessors, successors and assigns of the parties to this Agreement. The parties agree that it is in their commercial interest to be bound by the terms of this Agreement. This Agreement will be governed by the laws of the State of California.

12. If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, either such provision will be deemed amended to conform to such laws or regulations without materially altering the intention of the parties or it will be stricken and the remainder of this Agreement will remain in full force and effect.

13. All notices shall be sent to the addresses set forth above, and if to APPLE to the attention of Trademark counsel, and if to FAMILY SYSTEMS, to the attention of Trademark Counsel. All notices shall be sent by certified mail, return receipt requested.

14. Notwithstanding the foregoing provisions, APPLE recognizes and acknowledges that FAMILY SYSTEMS has filed or may file applications for registration of the IBOOK mark in many countries and that certain applications may have an identification of goods and/or services which is broader in scope than is provided for elsewhere in this Agreement. In the

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event, however, that APPLE is unable to obtain registration of its IBOOK mark in any country for goods which conform to the restrictions to which it has agreed in this Agreement, FAMILY SYSTEMS agrees to amend its application or registration in that country to conform to the restrictions to which it has agreed in the foregoing paragraphs, and, so long as APPLE does not materially breach this Agreement, FAMILY SYSTEMS agrees to take no action against APPLE applications and registrations for IBOOK which conform to the restrictions to which APPLE has agreed in the foregoing paragraphs. APPLE agrees to restrict the identification of goods in any application for IBOOK which it files or has filed as provided in the foregoing paragraphs and, under all circumstances, to amend the identifications of goods in its applications and registrations in any country however as may be necessary for FAMILY SYSTEMS to obtain registration of its IBOOK mark for goods and/or services which conform to the restrictions to which FAMILY SYSTEMS has agreed in the foregoing paragraphs. APPLE hereby further states and agrees that it has taken no action and, so long as FAMILY SYSTEMS does not materially breach this Agreement, will take no action which would interfere in any way with the FAMILY SYSTEMS applications and registrations for its IBOOK mark.

15. This Agreement shall be considered worldwide in effect.

This Agreement has been executed on behalf of each party by a duly authorized representative of such party, on the dates hereinafter indicated, in duplicate, each of which shall

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be considered an original, and this Agreement shall be deemed effective as of the date the transfer referred to in Appendix A attached hereto is completed.

APPLE COMPUTER, INC.

Date: May, 7 1999


By: 
Michael C. Wyatt

Name: _____

Title: Associate General Counsel & Assistant Secretary

FAMILY SYSTEMS LIMITED

Date: May, 7 1999

By: 

Name: Laurence Wertheimer

Title: Director